



DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

Clarification Concerning Tuition and Fees Payment Plans for Standard Terms and 85/15 Calculations

AGENCY: Department of Veterans Affairs.

ACTION: Policy interpretation.

SUMMARY: The Department of Veterans Affairs (VA) provides notice of a policy advisory issued on August 31, 2021, by VA's Education Service. The policy advisory clarifies and amends VA's previous regulatory interpretation of tuition and fees (T&F) payment plans to differentiate between types of payment plans. Some payment plans should no longer be categorized as institutional support to a student when calculating the ratio of "supported" to "non-supported" students in a program pursuant to the 85/15 Rule. While VA is retaining the general rule that a student who has a payment plan with an Educational Training Institute (ETI) should be considered supported, a student participating in a payment plan that meets the criteria set forth in this notice should *not* be considered supported and, instead, should be counted on the non-supported side of the 85/15 ratio.

DATES: This policy interpretation is applicable from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Cheryl Amitay, Chief of Policy and Regulations Team, Education Service (225), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, Telephone: 202-461-9800 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

The 85/15 rule (38 U.S.C. 3680A(d); 38 CFR 21.4201(a)) prohibits VA from paying educational assistance benefits to any new students once “more than 85 percent of the students enrolled in the [program of education] are having all or part of their tuition, fees or other charges paid to or for them by the educational institution or by the Department of Veterans Affairs” (38 U.S.C. 3680A(d)(1)). VA refers to students who receive such institutional or VA aid as “supported” students. Conversely, no less than 15 percent of the students enrolled in the program must be attending without having any of their tuition, fees or other charges paid to or for them by the educational institution or VA (referred to as non-supported students).

Currently, in accordance with 38 CFR 21.4201, educational institutions are required to track the percentage of supported and non-supported students enrolled in each of their approved programs and to confirm their compliance with the required 85/15 percent ratio (38 CFR 21.4201(e)-(f)). During the time the ratio of supported students to non-supported students exceeds 85 percent, no new students can be certified to receive VA education benefits for that program (38 CFR 21.4201(g)(2)). For the 85/15 calculations, new students include students returning after a break in enrollment unless the break is wholly due to circumstances beyond the student’s control (38 CFR 21.4201(g)(6)). The 85/15 rule allows VA to continue to pay benefits for students already enrolled in the program and receiving benefits prior to the ratio of supported students exceeding 85 percent of the total population enrolled in the program (38 CFR 21.4201(g)(2)).

A program suspended for violating the 85/15 rule still may retain all of its current students. VA beneficiaries already enrolled in the program will be allowed to receive benefits for the program as long as they remain continuously enrolled, even if the ratio of supported students rises above 85 percent. Also, a beneficiary enrolled at an educational institution organized on a term, semester or quarter basis need not attend

summer sessions to maintain continuous enrollment. Further, as provided in 38 U.S.C. 3680A(d) and 38 CFR 21.4201, any school is permitted to request a waiver from 85/15 reporting. Finally, there are exceptions to compliance with the 85/15 rule, such as the following:

- VA beneficiaries receiving Veteran Readiness and Employment (Chapter 31), or Survivors' and Dependents' Educational Assistance (Chapter 35) benefits.
- Certain types of education and training institutions such as high schools, aero clubs, and farm cooperative courses.
- Sites approved for on-the-job or apprenticeship training.

In 2020, the VA Education Service informed schools that a student who has a payment plan with an ETI also should be considered supported for calculating the 85/15 ratio. After consulting with various partners as well as striving to interpret T&F payment plans in a manner which balances the best interests of students with the statutory mandate of the 85/15 rule, VA amended its guidance regarding payment plans at ETIs in a policy advisory issued on August 31, 2021: Clarification Concerning Tuition and Fees Payment Plans for Standard Terms and 85/15 Calculations. The policy set forth in the aforementioned advisory is as follows:

For classifying a student as supported or non-supported on VA form 22-10215, Statement of Assurance of Compliance with 85/15 Enrollment Ratios, a student enrolled in an ETI **will be considered to be supported by the ETI unless all of the following apply** (i.e., if *all* of the following apply the student will be considered non-supported):

1. The availability and requirements of the payment plan are available for review and/or inspection by students, the State approving agency and VA (a) on the school's website and (b) in a dated hard copy on file at every campus of the ETI.
2. The ETI T&F payment plan includes the following provisions:

- a. The payment plan is available to any enrolled student who is interested in participating.
- b. The payment plan explicitly requires the student to pay the outstanding balance by the end of the 85/15 reporting period (academic term or calendar quarter) (i.e., the ETI requires the payment plan to be paid off in full no later than the end of the term).
- c. The payment plan must be paid in full before students can begin training for the next term.

To reiterate, unless ***all*** of the aforementioned conditions are met by the ETI and its T&F payment plan, the school's payment plan will still be considered a source of institutional support and should still be reported on the supported student count side of the 85/15 supported to non-supported ratio (i.e., the side that cannot exceed 85%). Conversely, if all of the aforementioned apply, the T&F payment plan should not be construed as providing institutional support so a student participating in one is *not* to be considered supported and should be reported on the non-supported side of the 85/15 ratio (i.e., the side that must be at least 15%).

The 85/15 rule ensures a minimum number of students who are not receiving VA funds are willing to pay for the full cost of the program to ensure the price of the program responds to the general demands of the open market and a minimum number of non-VA beneficiaries find the program worthwhile and valuable. VA cannot ensure compliance with the 85/15 rule nor ensure GI Bill beneficiaries are not being overcharged if there is an unpaid balance at the end of the reporting period that could subsequently be waived or otherwise written off.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on January 28, 2022 and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts

Regulation Development Coordinator

Office of Regulation Policy & Management,

Office of General Counsel,

Department of Veterans Affairs.

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